

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In Re:

**WILFRED PASCASIO and
CHRISTINE WATLER**

Hearing date: June 16, 2011
Hearing time: 10:00 a.m.

Case No.: 10-47561-ess
Chapter 13

NOTICE OF MOTION

Debtors.
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NOTICE OF MOTION TO DISALLOW

PLEASE TAKE NOTICE, that, upon the Motion of the Debtor for an Order disallowing the claim of Regions Bank (the "Motion") dated May 18, 2011, the Debtor will move at a hearing to be held before the Hon. Elizabeth S. Stong at the United States Bankruptcy Court, EDNY, Conrad B. Duberstein Courthouse, 271 Cadman Plaza East, Courtroom 3529, Brooklyn, NY 11201 on June 16, 2011 at 10:00 a.m. of said day, or as soon thereafter as counsel can be heard.

PLEASE TAKE FURTHER NOTICE that responsive papers, if any, shall be filed with the Court in compliance with the Court's electronic filing system and served upon Tanya P. Dwyer, Esq. at Dwyer & Associates LLC, 11 Broadway, Suite 615, New York, NY, 10004; Marianne DeRosa 100 Jericho Quadrangle, Suite 208 Jericho, NY 11753; with a courtesy copy delivered to the Hon. Elizabeth S. Stong so as to be received no later than the date and time of the hearing.

Dated: May 18, 2011
New York, New York

Respectfully submitted,

/s/ Tanya P. Dwyer
Tanya P. Dwyer
DWYER & ASSOCIATES LLC
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Tel: (212) 203-4757

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In Re:

Case No.: 10-47561-ess
Chapter 13

**WILFRED PASCASIO and
CHRISTINE WATLER**

**OBJECTIONS BY
DEBTORS TO PROOFS
OF CLAIM**

Debtors.

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To The Honorable Elizabeth S. Stong, United States Bankruptcy Judge

The application of WILFRED PASCASIO and CHRISTINE WATLER (the “Debtors”) objecting to the allowance of the unsecured claim #3, respectfully allege:

1. On August 10, 2010, the Debtors filed with this court a petition pursuant to Chapter 13 of Title 11 U.S.C. (the “Bankruptcy Code”). Michael J. Macco was originally appointed as Chapter 13 Trustee and was replaced by Marianne DeRosa, the standing Chapter 13 Trustee on September 15, 2010. A confirmation hearing was held on October 8, 2010 and subsequently adjourned to June 16, 2011.
2. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and this motion in this district is proper pursuant to 18 U.S.C. §§ 1408 and 1409. The statutory basis for relief sought herein are Title 11 U.S.C. §§ 502 and Fed.R.Bankr.P. Rules 3001 and 3007.
3. By this motion, the Debtors seek to disallow Claim #3, filed by Regions Bank. Copies of the original and amended proofs of claim have been annexed to this Motion as Exhibits A and B, respectively.

4. The last date to timely file proofs of claim was February 06, 2011 for governmental creditors and December 14, 2010 for all other creditors (the “Bar Date”). On September 9, 2010, Regions Bank filed a two-page proof of claim with no supporting documents (the “Original Claim”). On April 20, 2011, it filed an amended proof of claim and attached two documents: a “Mortgage” and an “Equity Assetline Agreement” (the “Amended Claim”).
5. The Bankruptcy Code states that a proof of claim will be deemed allowed unless the debtor or other party in interest objects. *See* 11 U.S.C. § 502(a). A proof of claim that is untimely filed, i.e., not filed by the Bar Date, will be automatically disallowed unless it meets certain exceptions.
6. Bankruptcy Rule 3001 requires that when a proof of a claim is based on a writing, an original or duplicate of the writing must be filed with the proof of claim.¹
7. Line 7 of Official Form B10 sets forth what type of supporting documents will act as evidence of the validity of the claim:

“Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary.”

8. The purpose of these rules is to ensure that debtors and other interested parties have sufficient information to determine whether to object to the claim. Failure to attach the documentation required by Rule 3001 will result in the loss of the prima facie validity of the claim. *In re Lundberg*, No. 02-34542(LMW), 2008 WL

¹ Fed. R. Bankr. P. 3001(c). If the writing has been lost or destroyed, a statement describing the loss or destruction must be filed.

4829846, at *2 (Bankr.D.Conn.2008) (“If the claimant fails to allege facts in the proof of claim that are sufficient to support the claim, e.g., by failing to attach sufficient documentation to comply with Fed. R. Bankr.P. Rule 3001(c), the claim is ... deprived of any prima facie validity which it could otherwise have obtained.”)

9. Regions’ Original Claim was filed before the Bar Date and lacked supporting documentation establishing a valid claim. The claim does not establish a prima facie showing that there are valid contracts between the debtor and the creditor, nor how the amounts were computed. Debtor therefore objects to the allowance of Regions’ claim.
10. When the bar date has passed, claim amendment is subject to the discretion of the court. *See In re McLean Indus., Inc.*, 121 B.R. 704, 708 (Bankr.S.D.N.Y.1990) (“It is well-settled that the decision to permit an amendment of a proof of claim rests within the sound discretion of the bankruptcy judge.”). “Post-bar date amendments should be scrutinized to ensure that the amendment is not making a new claim against the estate.” *In re Clamp-All Corp.*, 23,5 B.R. 137 (1st Cir. BAP1999). In this jurisdiction, courts follow a two-prong test to determine whether a claim will be amended. First, a court must determine whether there was a “timely assertion of a similar claim or demand evidencing an intention to hold the estate liable.” *In re Enron Creditors Recovery Corp.*, 370 B.R. 90, 95 (Bankr. S.D.N.Y.2007). “If the first prong is satisfied, the court must then determine whether it would be equitable to allow the amendment.” *Id.* at 95.

11. In this case, the Court should not allow Regions' Amended Claim because the Original Claim did not give a basis under which the claim was filed and for which the Debtor's estate would be held liable. Additionally, it would be inequitable to allow the Amended Claim because doing so would prejudice the unsecured creditors in this case. Therefore the claims should be disallowed and expunged.
12. No prior application has been made fore the relief requested herein.

WHEREFORE, it is respectfully requested that the Court grant the relief requested herein, to wit, disallowing, expunging claim #3, together with such other and further relief as is just and equitable.

Dated: New York, New York
May 18, 2011

/s/ Tanya P. Dwyer
Tanya P. Dwyer, Esq. (TD2845)
Dwyer & Associates LLC
Attorneys for the Debtors
11 Broadway, Suite 615
New York, NY 10004
(212) 203-4757

EXHIBIT A

CERTIFICATE OF SERVICE

Pursuant to FRBC 7005 & 9014(b) and FRCP 5(b)(2)(D) all parties noted in the Court's ECF transmission facilities have been served via ECF.

The following have been served by mail:

Marianne DeRosa
100 Jericho Quadrangle
Suite 208
Jericho, NY 11753

CERTIFICATE OF SERVICE BY MAIL / ECF

This document was served pursuant to FRBC 7004, 9001(8), 9013, 9014(b): 1) by mail in envelopes addressed to each of the parties addressed above; and /or 2) by electronic means, pursuant to LBR 7005-1, 9013-1(c) and 9036-1 on the parties noted on the Court's ECF transmission facilities, on May 18, 2011. The undersigned declares, under penalty of perjury pursuant to 28 USC 1746 that the foregoing is true and correct.

Signed: /s/ Tanya Dwyer
Tanya Dwyer

Date: May 18, 2011